

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MARIO ESPINOZA,

Case No. 3:21-cv-00198-MMD-CSD

Petitioner,

ORDER

v.

WILLIAM "BILL" GITTERE, *et al.*,

Respondents.

11 28 U.S.C. § 2254 habeas corpus Petitioner Mario Espinoza has filed a motion for
12 appointment of counsel. (ECF No. 18 (“Motion”).) There is no constitutional right to
13 appointed counsel for a federal habeas corpus proceeding. See *Pennsylvania v. Finley*,
14 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir. 1993). The
15 decision to appoint counsel is generally discretionary. See *Chaney v. Lewis*, 801 F.2d
16 1191, 1196 (9th Cir. 1986), *cert. denied*, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730
17 F.2d 1228, 1234 (9th Cir. 1984), *cert. denied*, 469 U.S. 838 (1984). However, counsel
18 must be appointed if the complexities of the case are such that denial of counsel would
19 amount to a denial of due process, and where the Petitioner is a person of such limited
20 education as to be incapable of fairly presenting his claims. See *Chaney*, 801 F.2d at
21 1196.

22 Here, Espinoza was convicted by a jury of first-degree murder and kidnapping and
23 sentenced to two terms of life without the possibility of parole. Espinoza alleges that he
24 has a long history of mental illness and had a potentially viable insanity defense. In order
25 to ensure due process, the Court grants Espinoza's Motion. In light of the appointment of
26 counsel, Respondents' motion to dismiss (ECF No. 21) is denied without prejudice.

27 Respondents have also filed a motion for leave to file an exhibit under seal. (ECF
28 No. 26.) While there is a presumption favoring public access to judicial filings and

1 documents, see *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597 (1978), a party
2 seeking to seal a judicial record may overcome the presumption by demonstrating
3 “compelling reasons” that outweigh the public policies favoring disclosure, *Kamakana v.*
4 *City and Cnty. of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006) (citations omitted). In
5 general, “compelling reasons” exist where the records may be used for improper
6 purposes. *Id.* at 1179 (citing *Nixon*, 435 U.S. at 598). Here, Respondents ask to file
7 Espinoza’s presentence investigation report (“PSI”) under seal because it is confidential
8 under state law and contains Espinoza’s identifiers and social security number. (ECF No.
9 26.) The Court has reviewed the PSI and concludes Respondents have demonstrated
10 compelling reasons to file the PSI under seal.

11 It is therefore ordered that Petitioner Mario Espinoza’s motion for appointment of
12 counsel (ECF No. 18) is granted.

13 It is further ordered that the Federal Public Defender for the District of Nevada
14 (“FPD”) is appointed to represent Espinoza.

15 The Clerk of Court is directed to electronically serve the FPD a copy of this order,
16 together with a copy of the petition for writ of habeas corpus (ECF No. 15). The FPD has
17 30 days from the date of entry of this order to file a notice of appearance or to indicate to
18 the Court its inability to represent Espinoza in these proceedings.

19 It is further ordered that after counsel has appeared for Espinoza in this case, the
20 Court will issue a scheduling order, which will, among other things, set a deadline for the
21 filing of an amended petition.

22 It is further ordered that Respondents’ motion for leave to file exhibit under seal
23 (ECF No. 26) is granted.

24 It is further ordered that Respondents’ motion to dismiss (ECF No. 21) is denied
25 without prejudice.

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1 It is further ordered that Respondents' motion to extend time to respond (ECF No.
2 19) to the petition is granted *nunc pro tunc*.

3 DATED THIS 5th Day of April 2022.

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8 MIRANDA M. DU
9 CHIEF UNITED STATES DISTRICT JUDGE
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